

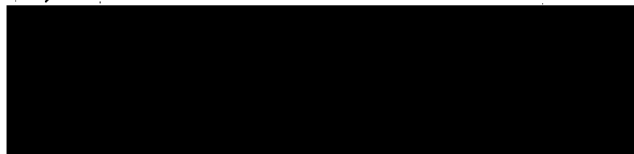


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Report

FILE

Office: Miami

Date:

NOV 27 2000

IN RE: Applicant:



APPLICATION:

Application for Permanent Residence under § 1 of the Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under § 1 of the Cuban Refugee Act of November 2, 1966. This statute provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant excludable from the United States because he falls within the purview of §§ 212(a)(2)(A)(i)(II), 212(a)(2)(B) and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II), 1182(a)(2)(B) and 1182(a)(2)(C). The director concluded the applicant was ineligible for adjustment of status and denied the application accordingly.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana.

In Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the Regional Commissioner held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law relating to illicit trafficking, since he is mandatorily inadmissible to the United States under present §§ 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, and no purpose would be served in granting the application.

The record reflects the following regarding the applicant:

(1) On January 29, 1987, the applicant was convicted of the offense of Sale and Delivery of Cocaine and Possession with Intent to Sell and Deliver Cocaine. He was sentenced to five years imprisonment.

(2) On July 19, 1988, the applicant was convicted of the offense of Sale, Purchase or Delivery of Controlled Substance, to wit: Cocaine. He was sentenced to one year and one day imprisonment.

(3) On July 19, 1988, the applicant was convicted of the offense of Introduction into or Possession of Contraband in a County Detention Facility, to wit: Cocaine. He was fined.

On February 10, 1989, an immigration judge denied the applicant's application for asylum and withholding of deportation and ordered the applicant excluded and deported from the United States. The applicant's appeal was dismissed by the Board of Immigration Appeals on June 22, 1989.

The record reflects that the applicant is inadmissible to the United States under § 212(a)(2)(A)(i)(II), 212(a)(2)(B) and 212(a)(2)(C) of the Act. No waiver of such ground of inadmissibility is available, except for a single offense of simple possession of 30 grams or less of marijuana. Therefore, the favorable exercise of discretion in this matter is not warranted.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the district director's decision to deny the application will be affirmed.

ORDER: The district director's decision denying the application is affirmed.